THE POONA CITY AND POONA SUBURBAN MUNICIPAL BOROUGHS (APPOINTMENT OF MUNICIPAL COMMISSIONER) ACT, 1948.

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BOMBAY ACT No. LXXX OF 1948.[1]

[THE POONA CITY AND POONA SUBURBAN MUNICIPAL BOROUGHS (APPOINTMENT OF MUNICIPAL COMMISSIONER) ACT, 1948.]

[*13th January 1949.*]

An Act to provide for the appointment of a Municipal Commissioner for the Poona City Municipal and the Poona Suburban Municipal Boroughs with a view to ensuring more efficient and suitable municipal administration for the Greater Poona region.

WHEREAS for the purpose of ensuring more efficient and suitable municipal administration for the Greater Poona region, it is necessary to take steps for the early establishment of a Municipal Corporation for the region ; and whereas to this end it is necessary and expedient to provide for the appointment of a Municipal Commissioner for the executive administration of municipal affairs in the Poona City Municipal Borough and the Poona Suburban Municipal Borough and for certain other purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title, commencement and extent.

1. (*1*) This Act may be called the Poona City and Poona Suburban Municipal Boroughs (Appointment of Municipal Commissioner) Act, 1948.

(*2*) It shall come into operation on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

(*3*) It shall extend to the Poona City and Poona Suburban Municipal Borough.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) " the Municipality " means the Poona City Borough Municipality or the Poona Suburban Borough Municipality, as the cacs may be ;

(*2*) " the Municipal Commissioner " means the Municipal Commissioner for the Poona City and Poona Suburban Municipal Boroughs appointed under section 3 and includes an acting Municipal Commissioner appointed under section 6 ;

Bom. XVIII of 1925.

(*3*) " the principal Act " means the Bombay Municipal Boroughs Act, 1925 ;

(*4*) words and expressions used in this Act but not defined shall have the meanings assigned to them in the principal Act.

Appointment of Municipal Commissioner.

3. (*1*) The Provincial Government shall appoint for the Poona City Municipal Borough and the Poona Suburban Municipal Borough a Municipal Commissioner who shall be designated " the Municipal Commissioner for the Poona City and Poona Suburban Municipal Boroughs ".

(*2*) The Municipal Commissioner shall hold office for such period as the Provincial Government may from time to time determine.

(*3*) The Municipal Commissioner may at any time, if he holds a lien on the service of the Crown, be recalled to such service after consultation with the Poona City Borough Municipality and the Poona Suburban Borough Municipality and may otherwise at any time be removed from office by the Provincial Government for incapacity, misconduct or neglect of duty.

[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1948, Part V, page 525.

Salary etc., of Municipal Commissioner.

4. (*1*) The Municipal Commissioner shall receive from the Poona City Borough Municipality and the Poona Suburban Borough Municipality such monthly salary and allowances as the Provincial Government may from time to time determine.

(*2*) The proportionate share of the salary and allowances of the Municipal Commissioner payable by the Poona City Borough Municipality and the Poona Suburban Borough Municipality respectively shall be determined and shall be paid to the Municipal Commissioner from the respective municipal funds of the said municipalities in accordance with such ratio as may from time to time be prescribed by the Commissioner by order in writing.

(*3*) The Municipal Commissioner shall devote his whole time and attention to the duties of his office as prescribed in this Act or in any other law for the time being in force, and shall not engage in any other profession, trade or business whatsoever :

Provided that he may, with the sanction of the Commissioner given after consultation with the Poona City Borough Municipality and the Poona Suburban Borough Municipality, serve on any committee constituted for the purpose of any local inquiry for the furtherance of any object of local importance or interest :

Provided also that the Provincial Government may direct the Municipal Commissioner to perform such duties and functions in connection with preliminary steps to be taken for the establishment of a Municipal Corporation for the Poona City and Poona Suburban Municipal Boroughs and contiguous areas as may in its opinion be necessary.

(*4*) When a salaried servant of the Crown is appointed as the Municipal Commissioner, the Poona City Borough Municipality and the Poona Suburban Borough Municipality shall, unless specially exempted wholly or in part from liability by the Provincial Government, make such contribution from the respective municipal funds of the said municipalities to his pension, leave and other allowances as may be required by the conditions of his service under the Crown to be made by him or on his behalf, the proportionate share payable by each Municipality being determined in accordance with the ratio prescribed for the time being under sub-section (*2*).

(*5*) When a person other than a salaried servant of the Crown is appointed as the Municipal Commissioner, the Commissioner may, in consultation with the Poona City Borough Municipality and the Poona Suburban Borough Municipality, sanction the payment of such pension or gratuity or of such compassionate allowance to his family on his death by each Municipality from its municipal fund as may be specified by order in writing.

Leave of absence.

5. (*1*) The Provincial Government may from time to time after consultation with the Poona City Borough Municipality and the Poona Suburban Borough Municipality grant leave of absence to the Municipal Commissioner for such period as it thinks fit.

(*2*) The allowance to be paid to the Municipal Commissioner while absent on leave shall be such amount, not exceeding his salary, as shall be fixed by the Provincial Government and shall, unless the Municipal Commissioner is a salaried servant of the Crown, be paid by the said municipalities from their respective municipal funds, the share payable by each being determined in accordance with the ratio for

the time being prescribed under sub-section (*2*) of section 4. If the Municipal Commissioner is a salaried servant of the Crown, the amount of such allowance shall be regulated by the rules for the time being in force relating to the leave allowance of salaried servants of the Crown of his class.

Appointment of substitute during absence of Municipal Commissioner

6. During the absence on leave, or other temporary vacancy in the office of the Municipal Commissioner, the Provincial Government may appoint a fit person to act as the Municipal Commissioner and every person so appointed shall exercise the powers and perform the duties of the Municipal Commissioner under this Act or any other law for the time being in force and shall be subject to all the liabilities, restrictions and conditions to which the Municipal Commissioner is liable.

Municipal Commissioner to be deemed to be officer of Municipality for certain purposes.

7. The Municipal Commissioner shall, for the purposes of sub-section (*2*) of section 12 and sections 54, 55 and 56 of the principal Act, be deemed to be an officer of the Municipality.

Power of Municipalities to require returns, reports or production of documents.

8. The Poona City Borough Municipality or the Poona Suburban Borough Municipality may require the Municipal Commissioner to furnish it with any return, statement, estimate, statistics or other information regarding any matter appertaining to the municipal government of the Poona City Municipal Borough or the Poona Suburban Municipal Borough, as the case may be, or a report on any such matter or a copy of any document in his charge and the Municipal Commissioner shall comply with every such requisition without unreasonable delay.

Powers and duties of Municipal Commissioner.

9. (*1*) The executive power for the purpose of carrying out the provisions of the principal Act in the Poona City Municipal Borough and the Poona Suburban Municipal Borough shall vest in the Municipal Commissioner, subject, wherever it is in this Act expressly so directed, to the approval or sanction of the Municipality concerned or the standing committee concerned, and subject to all other restrictions, limitations and conditions imposed by this Act. For the purpose of discharging his functions the Municipal Commissioner shall to the exclusion of every other authority, except as hereinafter otherwise provided, exercise all the powers specifically conferred on and perform all the functions assigned to the Chief Officer of a Borough Municipality by or under the principal Act and shall also make such requisitions by written notice, give such written consent or permission, issue such orders and prohibitions, exercise such powers and perform all such duties as may be exercised, performed, made, given or issued by or on behalf of the Municipality or the standing committee under any of the provisions contained in the following sections and sub-sections of the principal Act, namely:—

section 28, sub-section (*1*), clause (*e*), so far as service of a special notice is concerned,

section 66, second proviso,

section 67,

section 81, sub-sections (*3*) and (*4*),

section 82,

section 86,

section 91,

section 97,
section 99,
section 114,
section 115,
section 116,
section 117,
section 119,
section 120,
section 126,
section 127,
section 128,
section 137,
section 140,
section 142,
section 146,
section 162, sub-section (*2*),
section 163,
section 165,
section 165A.
section 171,
section 172, sub-section (*3*),
section 178,
section 179, in respect of the powers conferred on the Municipality,
section 180,
section 182,
section 183,
section 184, in respect of the powers conferred on the Municipality,
section 186,
section 187,
section 194,
section 195,
section 200 :

Provided that—

(*a*) the powers conferred by sections 91, 114 and 146 shall not be exercised by the Municipal Commissioner except with the previous approval, or in accordance with the general or special orders, of the Municipality concerned and the powers conferred by the second proviso to section 66, sections 67 and 116 and the proviso to sub-section (*1*) of section 194 shall not be exercised by the Municipal Commissioner except with the previous approval of the standing committee concerned ;

(*b*) the Municipal Commissioner shall not, except with the previous approval of the standing committee concerned, direct a prosecution or other proceedings to be taken for the punishment of any person who contravenes the provisions of section 55 or sub-section (*3*) of section 118 ;

(*c*) property, whether moveable or immovable, vested in or belonging to or otherwise held by the Municipality concerned shall not be deemed to vest in or to belong to or otherwise to be held by the Municipal Commissioner.

(*2*) The Municipality concerned may delegate to the Municipal Commissioner any of its powers not specified in sub-section (*1*) except the powers conferred on it by or under the principal Act to make rules or by-laws and to authorise the president, vice-president, a committee or a councillor to do anything.

Powers of Municipal Commissioner in emergency.

10. Notwithstanding any provision contained in this Act or in the principal Act, the Municipal Commissioner may in cases of emergency direct the execution or stoppage of any work or the doing of any act which requires the sanction of the Municipality and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the municipal fund :

Provided that—

(*a*) he shall not act under this section in contravention of any order of the Municipality concerned prohibiting the execution of any particular work or the doing of any particular act, and

(*b*) he shall report forthwith the action taken under this section and, the reason therefor to the standing committee concerned at its next meeting.

Municipal Commissioner deemed to be authorised in certain matters although not expressly so authorised.

11. The Municipal Commissioner shall be deemed to have been authorised by the Municipality concerned to exercise such powers or do such things as any officer of the Municipality has been authorised to exercise or do by the Municipality under the principal Act or any other law for the time being in force notwithstanding that the Municipality has not expressly so authorised him.

No appeal to lie against orders of Municipal Commissioner except in certain cases.

12. No appeal shall lie to the Municipality concerned in respect of any order passed or anything done by the Municipal Commissioner in the exercise of the powers conferred on him by or under this Act except in the case of an order passed or anything done by him under any of the following provisions of the principal Act, namely :—

Section 119, sub-sections (*1*) and (*2*),
Section 126, sub-section (*1*),
Section 132, sub-section (*2*),
Section 162, sub-section (*2*),
Section 186, sub-section (*1*).

Powers of Municipal Commissioner to appoint, grant leave, punish and dismiss.

13. (*1*) The Municipal Commissioner shall have, independently of such powers as may be delegated to him by the Municipality concerned in this behalf, exclusive power without the sanction of the Municipality—

(*a*) to appoint, subject to the rules for the time being in force under the principal Act in so far as such rules are not inconsistent with the provisions of this Act, a fit person to any post under the Municipality the monthly salary for which does not exceed two hundred rupees, other than to the post of health officer, engineer, chief accountant, secretary or auditor ;

(*b*) to grant, subject to the rules as aforesaid, leave of absence to the holder of any post to which he has power to appoint, and to appoint a fit person to act for such holder during such absence ;

(*c*) to fine, reduce, suspend, discharge, remove from office or dismiss the holder of any post to which he has power to appoint and, subject to the provisions of the rules as aforesaid, any other municipal officer or servant, not being the health officer, engineer, chief accountant, secretary or auditor:

Provided that no holder of a post the monthly salary for which exceeds one hundred rupees shall be discharged, removed from office or dismissed without the previous approval of the standing committee concerned.

(*2*) All officers and servants of the Municipality shall be subordinate to the Municipal Commissioner.

Punishment for person disobeying lawful direction given by Municipal Commissioner.

14. Whoever disobeys or fails to comply with a lawful direction given by the Municipal Commissioner in any matter shall be punishable in the same manner as a person who disobeys or fails to comply with a lawful direction given by the Municipality concerned in the same matter.

Termination of appointment of Chief Officers and appointment, functions and salaries of Assistant Municipal Commissioners.

15. (*1*) With effect from the date of the coming into operation of this Act, the Chief Officers of the Poona City Borough Municipality and the Poona Suburban Borough Municipality shall vacate their offices but shall be deemed to have been appointed with effect from the said date as Assistant Municipal Commissioners for the Poona City Municipal Borough and the Poona Suburban Municipal Borough respectively.

(*2*) The Assistant Municipal Commissioners so deemed to have been appointed shall be subordinate to the Municipal Commissioner and, subject to his orders, shall exercise such of the powers and perform such of the duties of the Municipal Commissioner in the Poona City Municipal Borough and the Poona Suburban Municipal Borough respectively as the Municipal Commissioner shall from time to time depute to each of them:

Provided that—

(*a*) the Municipal Commissioner shall inform the Municipality concerned of the powers and duties which he from time to time deputes to the Assistant Municipal Commissioner.

(*b*) all acts and things performed and done by the Assistant Municipal Commissioners during the tenure of their office and in virtue thereof shall for all purposes be deemed to have been performed and done by the Municipal Commissioner.

(*3*) The Assistant Municipal Commissioners deemed to have been appointed under sub-section (*1*) shall not be removed from office or suspended unless by the votes of at least two-thirds of the whole number of councillors of the Municipality concerned and shall not be punishable with fine.

(*4*) Each Assistant Municipal Commissioner shall receive from the municipal fund of the Municipality concerned such monthly salary and allowances, not lower than the salary and allowances drawn by him immediately prior to the coming into operation of this Act, as the Municipality concerned shall from time to time with the approval of the Commissioner determine.

(5) The Assistant Municipal Commissioners shall, except as otherwise provided in this section, be subject to the same liabilities, restrictions and conditions to which the Municipal Commissioner is subject.

Leave of absence of Assistant Municipal Commissioners and acting appointments.

16. (1) Leave of absence may be granted from time to time by the Municipality concerned to the Assistant Municipal Commissioner.

(2) The allowance to be paid to the Assistant Municipal Commissioner whilst so absent on leave shall be of such amount, not exceeding the amount of the salary of the Assistant Municipal Commissioner, as shall be fixed by the Municipality concerned.

(3) During the absence on leave or other temporary vacancy in the office of the Assistant Municipal Commissioner, the Municipality concerned may appoint a fit person to act as Assistant Municipal Commissioner and every person so appointed shall exercise the powers and perform the duties conferred and imposed on the person for whom he is appointed to act and shall be subject to all the liabilities, restrictions and conditions to which the said person is liable and receive from the municipal fund of the Municipality concerned such monthly salary not exceeding that prescribed under sub-section (4) of section 15 as the Municipality concerned shall determine.

Certain provisions of principal Act to operate in modified form or not to operate in Poona City Municipal Borough and Poona Suburban Municipal Borough.

17. With effect from the date of the coming into operation of this Act

(1) section 8 of the principal Act shall apply in the Poona City Municipal Borough and the Poona Suburban Municipal Borough as if for the words "its Chief Officer" the words "the Municipal Commissioner" had been substituted;

(2) clauses (c) and (d) of section 31, sub-section (3) of section 123 and sub-section (2) of section 131 of the principal Act shall cease to operate in the Poona City Municipal Borough and the Poona Suburban Municipal Borough; and

(3) sections 129, 132, 133, 134, 135 and 136 of the principal Act shall apply in the Poona City Municipal Borough and the Poona Suburban Municipal Borough as if the words "subject to the control of the standing committee" wherever they occur and the words "subject as aforesaid" where they occur in section 136 had been deleted.

Power of Municipal Commissioner to direct location of Municipal offices in either Borough.

18. It shall be lawful for the Municipal Commissioner to direct the location of any office of either Municipality within the limits of either the Poona City Municipal Borough or the Poona Suburban Municipal Borough.

Saving in respect of subsisting contracts, pending

19. (1) All contracts made by the Chief Officers of the Poona City Borough Municipality and the Poona Suburban Borough Municipality subsisting on the date immediately preceding the date of the coming into operation of this Act shall be deemed to have been made by the Municipal Commissioner on behalf of the

proceedings, appeals, suits, appointments, licences, orders, etc.

Municipality concerned in exercise of the powers conferred on him by this Act and shall continue in operation accordingly.

(2) All proceedings pending before the said Chief Officers or the standing or other executive committees of the Municipality or the Municipality on the said date which under the provisions of this Act have to be instituted before or undertaken by the Municipal Commissioner shall be transferred to and continued by the Municipal Commissioner.

(3) All appeals against orders or decisions of the said Chief Officers or the standing or other executive committees of the Municipality pending on the said date shall be disposed of as if this Act had not come into operation.

(4) All prosecutions instituted by the said Chief Officers and all suits and other legal proceedings instituted by or against the said Chief Officers pending on the said date shall be continued by or against the Municipal Commissioner.

(5) Any appointment, notice, order, license or permission made, issued or given in respect of the Poona City Muncipal Borough or the Poona Suburban Municipal Borough which, under the provisions of this Act, has to be made, issued or given by the Municipal Commissioner shall continue in force and be deemed to have been made, issued or given under the provisions of this Act by the Municipal Commissioner until it is legally terminated, cancelled or superseded.

This Act to override principal Act and other enactments.

20. Notwithstanding anything contained in the principal Act, the provisions of this Act shall apply to the Poona City Borough Municipality and the Poona Suburban Borough Municipality and shall prevail over anything inconsistent in the principal Act or any other law for the time being in force in its application to the said Municipalities and boroughs respectively.

Removal of difficulties.

21. If any difficulty arises in giving effect to the provisions of this Act, or by reason of anything contained in this Act, to the provisions of the principal Act or any other law for the time being in force, the Provincial Government may, as occasion requires, by order do anything which appears to it necessary for the purpose of removing the difficulty.